

**§ 218.107**

**49 CFR Ch. II (10–1–11 Edition)**

limits and ask whether that is correct; and

(3) The employee releasing the limits shall then confirm to the train dispatcher that this information is correct.

**§ 218.107 Additional operational requirements for hand-operated crossover switches.**

(a) Each railroad shall adopt and comply with an operating rule which complies with the requirements of this section. When any person including, but not limited to, each railroad, railroad officer, supervisor, and employee violates any requirement of an operating rule which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

(b) *Hand-operated crossover switches, generally.* Both hand-operated switches of a crossover shall be properly lined before rolling and on-track maintenance-of-way equipment begins a crossover movement. A crossover movement shall be completed before either hand-operated crossover switch is restored to normal position.

(c) *Correspondence of hand-operated crossover switches.* Hand-operated crossover switches shall be left in corresponding position except when:

- (1) Used to provide blue signal protection under § 218.27 of this part; or
- (2) Used for inaccessible track protection under § 214.327 of this chapter; or
- (3) Performing maintenance, testing or inspection of crossover switches in traffic control system (TCS) territory; or
- (4) One crew is using both tracks connected by the crossover during continuous switching operations.

**§ 218.109 Hand-operated fixed derails.**

(a)(1) Each railroad shall adopt and comply with an operating rule which complies with the requirements of this

section. When any person including, but not limited to, each railroad, railroad officer, supervisor, and employee violates any requirement of an operating rule which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

(2) Each railroad shall specify minimum requirements necessary for an adequate job briefing.

(b) *General.* (1) The normal position of fixed derails is in the derailing position except as provided in part 218, subpart B of this chapter, or the railroad's operating rules or special instructions.

(2) Fixed derails shall be kept in the derailing position whether or not any rolling and on-track maintenance-of-way equipment is on the tracks they protect, except as provided in paragraph (b)(1) of this section or when changed to permit movement.

(3) Movement must not be made over a fixed derail in the derailing position.

(c) Employees operating or verifying the position of a fixed derail shall:

- (1) Conduct job briefings, before work is begun, each time a work plan is changed, and at completion of the work;
- (2) Be qualified on the railroad's operating rules relating to the operation of the derail;
- (3) Be individually responsible for the position of the derail in use;
- (4) Determine that the target, if so equipped, corresponds with the derail's position;
- (5) Determine that the derail is secured by:
  - (i) Placing the throw lever in the latch stand, if so equipped;
  - (ii) Placing the lock or hook in the hasp, if so equipped; and
  - (iii) Testing such latches, locks or hooks; and
- (6) Ensure that when not in use, derails are locked, hooked, or latched in the normal position if so equipped.

APPENDIX A TO PART 218—SCHEDULE OF CIVIL PENALTIES<sup>1</sup>

Section	Violation	Willful violation
Subpart B—Blue signal protection of workmen:		
218.22 Utility employees:		
(a) Employee qualifications .....	\$5,000	\$7,500
(b) Concurrent service .....	5,000	7,500

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Section	Violation	Willful violation
(c) Assignment conditions.		
(1) No controlling locomotive .....	5,000	7,500
(2) Empty cab .....	5,000	7,500
(3)(4) Improper communication .....	5,000	7,500
(5) Performing functions not listed .....	2,000	4,000
(d) Improper release of utility employee .....	2,000	4,000
(f) More than three utility employees with one crew .....	2,000	4,000
218.23 Blue signal display .....	5,000	7,500
218.24 One-person crew:		
(a)(1) Equipment not coupled or insufficiently separated .....	2,000	4,000
(a)(2) Unoccupied locomotive cab not secured .....	5,000	7,500
(b) Helper service .....	2,000	4,000
218.25 Workmen on a main track .....	5,000	7,500
218.27 Workmen on track other than main track:		
(a) Protection provided except that signal not displayed at switch .....	2,000	4,000
(b) through (e) .....	5,000	7,500
218.29 Alternate methods of protection:		
(a)(1) protection provided except that signal not displayed at switch .....	2,000	4,000
(a)(2) through (a)(8) .....	5,000	7,500
(b)(1) Protection provided except that signal not displayed at switch .....	2,000	4,000
(b)(2) through (b)(4) .....	5,000	7,500
(c) Use of derails .....	5,000	7,500
(d) Emergency repairs .....	5,000	7,500
218.30 Remotely controlled switches:		
(a) and (b) .....	5,000	7,500
(c) .....	1,000	2,000
Subpart C—Protection of trains and locomotives:		
218.35 Yard limits:		
(a) and (b) .....	5,000	7,500
(c) .....	1,000	2,000
218.37 Flag protection:		
(a) .....	5,000	7,500
(b) and (c) .....	5,000	7,500
218.39 Hump operations .....	5,000	7,500
218.41 Noncompliance with hump operations rule .....	5,000	7,500
Subpart D—Prohibition against tampering with safety devices:		
218.55 Tampering .....		7,500
218.57 (i) Knowingly operating or permitting operation of disabled equipment .....	2,500	
(ii) Willfully operating or permitting operation of disabled equipment .....		5,000
218.59 Operation of disabled equipment .....	2,500	5,000
Subpart F—Handling Equipment, Switches and Derails:		
218.95 Instruction, Training, and Examination:		
(a) Program .....	9,500–12,500	13,000–16,000
(b) Records .....	7,500	11,000
(c) Failure to timely or appropriately amend program after disapproval .....	9,500–12,500	13,000–16,000
218.97 Good Faith Challenge Procedures:		
(a) Employee Responsibility Failure .....		5,000
(b) through (d) Failure to adopt or implement procedures .....	7,500	
218.99 Shoving or Pushing Movements:		
(a) Failure to implement required operating rule .....	9,500	
(b) Failure to conduct job briefing, use a qualified employee, or establish proper protection .....	7,500–9,500	11,000–13,000
(c) Failure to observe equipment direction .....	9,500	13,000
(d) Failure to properly establish point protection within a remote control zone .....	9,500	13,000
(e) Failure to abide by operational exception requirements .....	9,500	13,000
218.101 Leaving Equipment in the Clear:		
(a) Failure to implement required operating rule .....	9,500	
(b) Equipment left improperly fouling .....	9,500	13,000
(c) Failure to implement procedures for identifying clearance points .....	9,500	13,000
218.103 Hand-operated switches, including crossover switches:		
(a) Failure to implement required operating rule .....	9,500	
(b) through (d) Railroad and employee failures .....	7,500	
218.105 Additional operational requirements for hand-operated main track switches:		
(a) Failure to implement required operating rule .....	9,500	
(b) and (c) Railroad and employee failures .....	7,500	11,000
(d) Failure to properly release authority limits .....	12,500	
218.107 Additional operational requirements for hand-operated crossover switches:		
(a) Failure to implement required operating rule .....	9,500	
(b) and (c) Railroad and employee failures .....	7,500	11,000
218.109 Hand-operated fixed derails:		
(a) Failure to implement required operating rule .....	9,500	13,000

Section	Violation	Willful violation
(b) and (c) Railroad and employee failures .....	7,500	11,000

<sup>1</sup> Except as provided for in §218.57, a penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$100,000 for any violation where the circumstances warrant. See 49 CFR part 209, appendix A.

[53 FR 52928, Dec. 29, 1988, as amended at 54 FR 5492, Feb. 3, 1989; 58 FR 43293, Aug. 16, 1993; 60 FR 11050, Mar. 1, 1995; 63 FR 11621, Mar. 10, 1998; 72 FR 51196, Sept. 6, 2007; 73 FR 8503, Feb. 13, 2008; 73 FR 79701, Dec. 30, 2008]

#### APPENDIX B TO PART 218—STATEMENT OF AGENCY ENFORCEMENT POLICY ON BLUE SIGNAL PROTECTION FOR UTILITY EMPLOYEES

The following examples of the application of the train or yard crew exclusion from required blue signal protection for utility employees are provided to clarify FRA's enforcement policy. In the first four examples, the utility employee is properly attached to and functioning as member of a train or yard crew and is excluded from blue signal protection, provided all the conditions specified in §218.22 are met:

*Example 1:* A utility employee assists a train crew by adding or reducing railroad cars to or from the train. The utility employee may perform any duties which would normally be conducted by members of the train crew, i.e., setting or releasing handbrakes, coupling air hoses and other connections, prepare rail cars for coupling, and perform air brake tests.

*Example 2:* A utility employee is assigned to assist a yard crew for the purpose of classifying and assembling railroad cars. The yard crew onboard their locomotive arrives at the location in the yard where the work is to be performed. At that time, the utility employee may attach himself to the yard crew and commence duties as a member of that yard crew.

*Example 3:* A utility employee is assigned to inspect, test, remove and replace if necessary, a combination rear end marking device/end of train device on a through freight train. The utility employee attaches himself to the train crew after the arrival of the train and its crew at the location where this work is to be conducted. He may then perform duties as a member of that crew.

*Example 4:* A railroad manager who properly attaches himself as a utility employee to a train or yard crew, in accordance with §218.22, may then function as a member of the train or yard crew under the exclusion provided for train and yard crews.

NOTE: In the last four examples, any railroad employee, including regularly assigned crew members, would need blue signal protection to perform the described function.

*Example 5:* Prior to the arrival of a through freight train, a utility employee installs an end-of-train device on one end of a block of railroad cars that are scheduled to be picked up by the freight train.

*Example 6:* A railroad employee attaches himself to a train or yard crew while the crew is in the ready room preparing to take charge of their train. Prior to the train crew leaving the ready room and taking charge of the equipment, the employee couples air hoses and other connections between the locomotives.

*Example 7:* A railroad employee is attached to a train crew after the train crew has taken charge of the train. It is necessary for the employee to perform a repair on a rail car, such as replacing a brake shoe, in addition to those duties normally performed by train or yard crew members.

*Example 8:* A train or yard crew, supplemented by three utility employees, has an assigned locomotive and train. The regular crew, including the engineer, has left the train to eat lunch. The utility employees have remained with the train and are coupling air hoses between rail cars in the train.

[58 FR 43293, Aug. 16, 1993]

#### APPENDIX C TO PART 218—STATEMENT OF AGENCY ENFORCEMENT POLICY ON TAMPERING

The Rail Safety Improvement Act of 1988 (Pub. L. 100-342, enacted June 22, 1988) ("RSIA") raised the maximum civil penalties available under the railroad safety laws and made individuals liable for willful violations of those laws. Section 21 of the RSIA requires that FRA adopt regulations addressing three related but distinct aspects of problems that can occur when safety devices are tampered with or disabled. It requires that FRA make it unlawful for (i) any individual to willfully tamper with or disable a device; (ii) any individual to knowingly operate or permit to be operated a train with a tampered or disabled device; and (iii) any railroad to operate such a train.

Because the introduction of civil penalties against individuals brings FRA's enforcement of the rail safety laws into a new era and because the changes being introduced by